

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Plaintiff Michael Stephen Robb (“Robb”), who is proceeding *in forma pauperis*, filed a complaint alleging that he was unlawfully detained for eleven days and that he was denied his right to counsel. (Doc. #3). Under 28 U.S.C. § 1915(e)(2), the court may review an *in forma pauperis* complaint and dismiss the action if it is frivolous or malicious, fails to state a claim, or seeks monetary relief against a defendant who is immune from such relief.

Robb states that on October 12, 2012, he was arrested in Cass County, North Dakota on a bench warrant issued in Wisconsin, he appeared before the state court in Cass County, and he waived extradition. (Doc. 3, p. 3). He alleges that on October 22, 2012, his application for court appointed counsel was denied, the North Dakota State District Judge ruled that the bench warrant was invalid, and the Clerk of Court closed the case.¹ Id. Robb contends he was illegally held for eleven days after the warrant was declared invalid and was not released from custody until November 2, 2012. Id. Robb seeks compensatory damages from the states of North

¹ The state district court docket reveals that two days after Robb's application for court appointed counsel was denied on October 22, 2012, the state district court found that Robb was eligible for appointed counsel and a public defender was appointed. State v. Robb, Cass County, Case No. 09-2012-CR-03728.

Dakota and Wisconsin for the eleven days he was unlawfully detained, and he requests punitive damages from the states of North Dakota and Wisconsin for being denied counsel at his initial court proceedings. Id. at p. 4.

States enjoy immunity from suit in the federal courts under the Eleventh Amendment. Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989). The sovereign immunity enjoyed by states “bars private parties from bringing actions for damages against unconsenting states in federal courts.” Thomas v. St. Louis Bd. of Police Com’rs, 447 F.3d 1082, 1084 (8th Cir. 2006) (citations omitted). The states of North Dakota and Wisconsin are immune from Robb’s claims for damages. It is **RECOMMENDED** that Robb’s complaint be **DISMISSED** with prejudice. It is further **RECOMMENDED** that the court find that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis.

Dated this 13th day of March, 2013.

/s/ Karen K. Klein
Karen K. Klein
United States Magistrate Judge

Notice of Right to Object

Pursuant to Rule 72(a) and (b), Federal Rules of Civil Procedure, and District of North Dakota Local Court Civil Rule 72.1(D)(2) and (3), plaintiff may object to this Report and Recommendation by filing with the Clerk of Court no later than April 1, 2013, a pleading specifically identifying those portions of the Report and Recommendation to which objection is made and the basis of any objection. Failure to object or to comply with this procedure may forfeit the right to seek review in the Court of Appeals.